

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MALCTORZATA TROCKA,

07-Civ.-3718 (SCR)

Plaintiff,

**ANSWER**

- against -

**JURY TRIAL DEMANDED**

NICOLE D. ELI, A MEMBER OF THE  
NEW YORK STATE POLICE,

Defendant.  
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Defendant, Nicole E. Eli, by her attorney, Andrew M. Cuomo, Attorney General of the State of New York, answers the complaint as follows:

1. Defendant denies the allegations in plaintiff's complaint, except to the extent admitted below.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 1 of plaintiff's complaint.

3. Defendant admits to the truth of the allegations contained in ¶2 of plaintiff's complaint.

4. Paragraph 3 purports to establish the jurisdiction of the Court and the basis of relief sought by plaintiff, and as such no response is required. To the extent a response is required, defendant denies the allegations.

5. Defendant denies the truth of the allegations asserted in ¶ 4, except to admit that on September 13, 2006, defendant Eli was assigned to Minisink High School.

6. Defendant denies the truth of the allegations asserted in ¶¶ 5, 6, 7, 8, 9, and 10.

7. Defendant denies the truth of the allegations asserted in ¶ 11, except to admit that on September 13, 2006, defendant Eli was assigned to Minisink High School as a member of the New York State Police.

8. Defendant denies the truth of the allegations asserted in ¶¶ 12 and 13.

### **Defenses**

#### **As and for a first defense**

9. All or part of plaintiff's claims are barred, in whole or in part, by the applicable Statutes of Limitations and/or by the doctrine of laches. Plaintiff's state law claims are barred by the applicable Statute of Limitations.

#### **As and for a second defense**

10. Plaintiff's claims, in whole or in part, fail to set forth a claim, or to allege sufficient facts upon which relief may be granted.

#### **As and for a third defense**

11. Plaintiff's claims fail to raise claims over which this Court has subject matter jurisdiction, and specifically fail to raise a substantial federal question, and therefore this Court is, it is respectfully submitted, without jurisdiction.

#### **As and for a fourth defense**

12. Answering defendant's actions were not violative of plaintiff's clearly established constitutional rights and/or she reasonably believed that no clearly established constitutional rights existed that defendant could have violated, as such, defendant is entitled to qualified immunity. Moreover, defendant's actions were objectively reasonable, as such, defendant is entitled to qualified immunity.

**As and for a fifth defense**

13. To the extent that answering defendant lacked any personal involvement with plaintiff, and as the doctrine of respondeat superior does not apply to actions brought under 42 U.S.C. §1983, such defendant is immune from liability.

**As and for a sixth defense**

14. Answering defendant at no time acted willfully or maliciously in disregard of plaintiff's constitutional rights, and therefore plaintiff is not entitled to punitive damages or other relief.

**As and for an seventh defense**

15. This action is barred in whole or in part, by the Eleventh Amendment to the United States Constitution.

**As and for a eighth defense**

16. This action may be barred by the doctrines of waiver, estoppel, collateral estoppel and res judicata, and is barred in addition for failure to exhaust state and administrative remedies.

**WHEREFORE**, answering defendant respectfully requests this Court to dismiss the complaint in its entirety, and grant such further relief as the Court deems just and proper.

Dated: New York, New York  
June 11, 2007

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State of New York  
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